



Civil Resolution Tribunal

Date Issued: March 6, 2024

File: ST-2022-010104

Type: Strata

Civil Resolution Tribunal

Indexed as: *Capra Holdings Ltd. v. The Owners, Strata Plan BCS1695*,
2024 BCCRT 224

B E T W E E N :

CAPRA HOLDINGS LTD.

APPLICANT

A N D :

The Owners, Strata Plan BCS 1695

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a rooftop HVAC unit. The applicant, Capra Holdings Ltd. (Capra), owns strata lot 12 (SL12) in the respondent strata corporation, The Owners, Strata Plan BCS1695 (strata). Capra alleges that strata bylaw 8.6 is invalid as it forces commercial strata lot owners like Capra to repair and maintain the HVAC unit. Capra

seeks an order that the strata be held responsible for such repairs and maintenance. It also provides a claim amount of \$30,000, which I interpret to represent the estimated cost of future work and not a claim for compensation.

2. The strata denies liability. It says bylaw 8.6 is valid and enforceable. It says that in any event, the owners passed a user fee rule after this dispute started. The rule requires Capra to pay for future operating and maintenance costs.
3. A director represents Capra. A strata council member represents the strata.
4. For the reasons that follow, I find Capra has proven its claim. However, my decision does not address the issue of the user fee rule.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court.

8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

Issues outside the Dispute Notice

9. Capra applied for dispute resolution on December 23, 2022. In November 2023 the strata called a special general meeting. The minutes show that at the meeting, the owners in the strata passed the user fee rule discussed above. It requires owners like Capra that use or derive a benefit from an HVAC unit to pay a user fee calculated on a reasonable basis.
10. The Dispute Notice refers to bylaw 8.6 as the basis for its claim. Capra never amended it to include any consideration of the fee rule. So, I will consider the validity of bylaw 8.6 and not the user fee rule.
11. I also note that under *Strata Property Act* (SPA) section 110, a strata corporation may impose user fees for the use of common property or common assets. SPA section 110 does not directly comment on who must repair and maintain such items. So, I find the existence of user fees is separate from who must repair or maintain common property or common assets. I therefore find that I may address the validity of bylaw 8.6 and who must repair and maintain the HVAC unit without addressing the issue of the user fees.
12. Capra says the user fee rule is a form of collateral attack. A collateral attack is an attack with the specific purpose of reversing, varying, or nullifying of the order or judgement in another proceeding. See *Mohl v. The University of British Columbia*, 2004 BCSC 1238. I find it would be premature to make any findings about whether the user fee is a collateral attack on this decision. I say this partly because it may be the subject of future litigation.

The Issue of Standing

13. The strata briefly raised the issue of standing in its submissions. It cited *The Owners, Strata Plan LMS 1906 v. Rogers*, 2020 BCCRT 1392, for the principle that a party does not have standing to make a claim relating to the interests of a non-party. Capra did not address this issue.
14. Some of Capra's evidence referred to strata lot 5. I find the strata likely refers to this evidence in its submissions about standing. However, I find Capra did not actually make any claims on behalf of strata lot 5's owner. Capra has a clear interest in who is responsible for repairing and maintaining the HVAC unit. So, I find Capra has standing to make the claims in this dispute.

ISSUES

15. The issues in this dispute are as follows:
 - a. Is bylaw 8.6 valid?
 - b. Must the strata repair and maintain the HVAC unit that services SL12?

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, Capra as the applicant must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.
17. A title search shows Capra became SL12's owner in January 2022. Photos show that the strata has at least 2 rooftop HVAC units. It is undisputed that the HVAC unit at issue only services SL12 and strata lot 90. Strata lot 90's owner is not a party to this dispute. There is another HVAC unit that services residential strata lots. Capra makes no claims about it.

18. The strata plan shows the rooftop is common property. It does not show the HVAC unit. Capra say the HVAC unit is common property. The strata says it is “debatable” whether it is common property or a common asset under the SPA. I find that for the purposes of this dispute, it is either common property or a common asset and nothing turns on the distinction.
19. The strata filed a complete set of bylaws in May 2006 in the Land Title Office. It filed many subsequent amendments. I discuss the relevant bylaws below.
20. Bylaws 1.1 and 1.2 establish commercial and residential sections in the strata. They also specify that SL12 is part of the commercial section.
21. Bylaw 1.5 specifies that the sections must repair and maintain certain forms of property. However, the categories are narrow and ultimately irrelevant to this dispute.
22. Bylaw 2.2 says that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata or a section under the bylaws.
23. Bylaw 3.1 says that the strata must repair and maintain common assets and common property.
24. Bylaw 8.6, filed on July 15, 2014, says the following. Commercial section owners are responsible for the maintenance of the HVAC units belonging to their strata lot which are located on the roof of the building. Each commercial strata lot must have the HVAC units serviced annually by a licensed and insured professional and provide a copy of the service report to the strata yearly by July 1.

Is bylaw 8.6 valid?

25. Under SPA sections 3 and 72(1) and bylaw 3.1, the strata must repair and maintain common property and common assets. Under SPA section 72(2)(b), the strata may, by bylaw, make an owner responsible for the repair and maintenance of common property other than limited common property only if identified in the regulation.

26. Under SPA section 121, a bylaw is not enforceable to the extent it contravenes the SPA.
27. Capra says that bylaw 8.6 is invalid and unenforceable. It says that it breaches SPA sections 3 and 72(1). It also says that there are no regulations under SPA section 72(2)(b) that identify types of undesignated common property that the strata may make an owner responsible for through a bylaw.
28. The strata says bylaw 8.6 is valid and enforceable. It emphasized that in any event the user fee rule is enforceable. As I've said earlier, the issue of the user fee rule is not directly before me.
29. In *Bowie v. The Owners, Strata Plan VIS 5766*, 2020 BCCRT 733, the CRT held that a heat pump and fan coil were both common property. The CRT also held that as such, the strata had to repair the maintain them. The CRT decided that the bylaws that stated the strata corporation was not responsible for repairing or maintaining the heat pump and fan coil were unenforceable under SPA section 121.
30. CRT decisions are not binding. However, I agree with the reasoning in *Bowie* and find it applicable here. I find the strata must repair and maintain the HVAC unit under the SPA because it is either common property or a common asset. I also agree with Capra that there are no regulations under SPA section 72(2)(b) that would allow the strata to make an exception under the bylaws.
31. Given the above, I order the strata to repair and maintain the HVAC unit that services SL12 and SL90, as requested by Capra. Although the strata must already do so regardless of my order, I find the order reasonably necessary here so that Capra may enforce it.
32. As bylaw 8.6 breaches the SPA, I also order the strata to refrain from enforcing bylaw 8.6. I find this necessary to give effect to my above-mentioned order. Nothing in my decision prevents the strata from amending the bylaws if it wishes to in the future.

CRT FEES AND EXPENSES

33. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Capra \$225 in CRT fees. The parties did not claim any specific dispute-related expenses.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner, Capra.

ORDERS

35. I order the strata to repair and maintain the HVAC unit that services SL12 and strata lot 90.
36. I order the strata to refrain from enforcing bylaw 8.6.
37. Within 30 days of the date of this order, I order the strata to pay Capra \$225 in CRT fees.
38. Capra is entitled to post-judgment interest, as applicable.
39. This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

David Jiang, Tribunal Member